

DATE: October 31, 2005

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Expedited Sunset
Review of the Antidumping Duty Order on Certain Tin Mill
Products from Japan; Final Results

Summary

We have analyzed the substantive responses of the domestic interested parties in the sunset review of the antidumping duty order covering certain tin mill products from Japan.¹ We recommend that you approve the positions we developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this sunset review for which we received substantive responses:

1. Likelihood of continuation or recurrence of dumping
2. Magnitude of the margins likely to prevail

History of the Order

The Department of Commerce ("the Department") published its final affirmative determination of sales at less than fair value (LTFV) in the Federal Register with respect to imports of certain tin mill products from Japan at the following rates:²

Japan

Nippon Steel Corporation ("NSK")	95.29
Kawasaki Steel Corporation ("KSC")	95.29
NKK Corporation ("NKK")	95.29
Toyo Kohan Co., Ltd ("Toyo Kohan")	95.29
All Other Japanese Manufacturers and Exporters	32.52

¹ No responses were received from respondent interested parties.

² See Certain Tin Mill Products from Japan: Notice of Antidumping Duty Order, 65 FR 52067 (August 28, 2000).

While there have been three changed circumstance reviews and four scope proceedings since the antidumping duty order was published, no administrative reviews have been requested or conducted.

Background

On July 1, 2005, the Department initiated a sunset review of the antidumping duty order on certain tin mill products from Japan pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). See Initiation of Five-Year (“Sunset”) Reviews, 70 FR 38101 (July 1, 2005). The Department invited parties to comment. The Department received notices of intent to participate from two domestic interested parties, U.S. Steel and Mittal Steel USA ISG Inc. (“Mittal Steel”) (collectively, the domestic interested parties) within the deadline specified in section 351.218(d)(1)(i) of the Department’s regulations. The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as U.S. producers of a domestic like product. Mittal Steel is the successor to Weirton Steel, a petitioner in the original investigation. The Department did not receive any response to the notice of initiation from any respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department’s regulations, the Department conducted an expedited sunset review of this order.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted this sunset review to determine whether revocation of this antidumping duty order would likely lead to the continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the periods before and the periods after the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the International Trade Commission (“ITC”) the magnitude of the margins of dumping likely to prevail if the order were revoked. Below we address the comments of the interested parties.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

The domestic interested parties argue that revocation of the antidumping duty order would likely lead to a continuation or recurrence of dumping by the Japanese manufacturers, producers, and exporters of the subject merchandise due to continued or resumed dumping. See Substantive Responses of Domestic Interested Parties for Japan, July 29, 2005 (“Mittal Substantive Response”), and August 1, 2005, (“U.S. Steel Substantive Response”). The domestic interested parties contend that the dumping margins remain at above de minimis levels for all manufacturers, producers, and exporters of the subject merchandise. See Mittal Substantive Response at 7 - 10; U.S. Steel Substantive Response at 11.

The domestic interested parties assert that import volumes plummeted following the initiation of the investigation in July 1999. Specifically, the domestic interested parties note that import volumes of tin mill products from Japan fell to between six percent and 30 percent of the pre-initiation levels after issuance of the order in August 2000. See Mittal Substantive Response at 6; see also U.S. Steel Substantive Response at 12. To provide evidence for their claim of decreasing import volumes of subject merchandise from Japan, the domestic interested parties provided import volumes of the subject merchandise under the Harmonized Tariff Schedule subheadings 7210.11.0000, 7210.12.0000, 7210.50.0000, 7212.10.0000, 7212.50.0000, 7225.99.0090, and 7226.99.0000 for the periods August 1998 through July 2004. See Mittal Substantive Response at 6 and U.S. Steel Substantive Response at 13 (based on U.S. Department of Commerce, Bureau of the Census, Imports for Consumption, IM-145).

As to dumping margins, U.S. Steel notes that no administrative reviews have been conducted since the order was issued in this case. Citing the Department's past precedent, U.S. Steel states that, as a result of no administrative reviews in this case, the Department should determine that dumping margins determined in the investigation continue to exist for all shipments of subject merchandise from Japan. In support, U.S. Steel cites Grain-Oriented Electrical Steel from Italy and Japan; Final Results of Expedited Sunset Reviews of Antidumping Duty Orders, 65 FR 41433 (July 5, 2000) and accompanying Issues and Decision Memorandum at Comment 1 and Uranium from Ukraine; Final Results of Expedited Sunset Review of Antidumping Duty Order, 65 FR 11552 (March 3, 2000) and accompanying Issues and Decision Memorandum at Comment 2. The domestic interested parties state that the continued existence of margins above de minimis is a sufficient basis for the Department to conclude that Japanese producers are likely to continue to engage in dumping in the absence of an antidumping order. See Policies Regarding the Conduct of Five Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 18871, 18872 (April 16, 1998).

Department's Position

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (URAA), specifically the Statement of Administrative Action (SAA), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report), and the Senate Report, S. Rep. No. 103-412 (1994) (Senate Report), the Department normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above de minimis after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of an order and import volumes for the subject merchandise declined significantly.

The margins from the investigation are the only margins that we can examine because neither domestic nor respondent interested parties have requested any administrative reviews of the order. Thus, deposit rates above de minimis remain in effect for exports of tin mill products from Japan. As a result, the Department determines that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping.

The Department also analyzed and considered the volume of imports of the subject merchandise from Japan for two years before the issuance of the order through 2004, the last full

year of available statistics. See Memorandum to the File from John Drury, Case Analyst, through Abdelali Elouaradia, Program Manager, regarding the Import Volumes for the Expedited Sunset Review of the Antidumping Duty Order on Certain Tin Mill Products from Japan; Final Results, dated October 31, 2005 (“Import Volumes Memorandum”). We note that import volumes continue to be well below pre-initiation levels.

Using statistics provided by the ITC DataWeb (see Import Volumes Memorandum, dated October 31, 2005), the Department finds that imports of tin mill products from Japan have steadily decreased from the pre-initiation level of 273,992 short tons in 1998 to only 43,787 short tons in 2004. We note that the highest import volume since the order was issued in 2000 was 76,668 short tons in 2001, which is a 72 percent decrease from the pre-initiation level of 273,992 short tons in 1998. Given that dumping continues at above de minimis levels, and import volumes during the period of this sunset review are substantially below the pre-initiation level, the Department determines that dumping would be likely to continue or recur if the order were revoked.

In sum, on the basis of information on the record, and for the reasons discussed above, we continue to find that dumping would be likely to continue or recur if the AD order were revoked.

2. Magnitude of the Margin Likely to Prevail

Interested Party Comments

The domestic interested parties state that the only dumping margins that have been determined by the Department are 95.29 percent for NSC, KSC, NKK, and Toyo Kohan, and 32.52 percent for “all other” Japanese exporters of tin mill products. See U.S. Steel Substantive Response at 15. U.S. Steel adds that the Department should report these margins to the ITC as the margins likely to prevail if the antidumping duty order were revoked.

Department’s Position

Section 752(c)(3) of the Act provides that the Department will report to the ITC the magnitude of the margin of dumping that is likely to prevail if the order were revoked. The Department normally will select a margin from the final determination of the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order. See SAA at 890, and the House Report at 64. For companies not investigated specifically or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the “all others” rate from the investigation. The Department’s preference for selecting a margin from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place.

Pursuant to section 752(c)(3) of the Act, the Department must determine the appropriate rates to report to the ITC for tin mill products from Japan. In the final determination of the investigation, the Department found dumping margins of 95.29 percent for NSC, KSC, NKK, and Toyo Kohan, and 32.52 percent for “all others.” No administrative reviews have been requested for this order. Thus, the Department finds that it is appropriate to provide the ITC with

the rates from the investigation because these are the only calculated rates that reflect the behavior of manufacturers, producers, and exporters without the discipline of the order in place. Thus, the Department will report to the ITC these same margins as listed in the Final Results of Review section of this memorandum.

Final Results of Review

As a result of this review, the Department determines that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-Average Margin (percent)
Nippon Steel Corporation	95.29
Kawasaki Steel Corporation	95.29
NKK Corporation	95.29
Toyo Kohan Co., Ltd.	95.29
All Other Japanese Manufacturers and Exporters	32.52

Recommendation

Based on our analysis of the substantive responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of this sunset review in the Federal Register.

AGREE _____

DISAGREE _____

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

Date